



United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

Pursuant to your request of January 7, 1988, I am pleased to provide the Department's views on S. 858, entitled the "Abandoned Shipwreck Act of 1987." This Department has, apart from the comments below, no objections to the legislation.

*msd*  
*totally* [ As drafted, S. 858 would assert U.S. title to any abandoned shipwreck located in or on submerged lands of a State. The term "submerged lands" is defined in Section 3(f) of the draft legislation as the lands:

*accurate*  
*but to*  
*for su*  
*purpose*  
(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

There is a difficulty with the definitions incorporated, at least with respect to Texas, Florida and Puerto Rico, because each of those jurisdictions has rights in submerged lands out to a distance of three marine leagues (nine nautical miles).

The Honorable  
Walter B. Jones,  
Chairman,  
Committee on Merchant Marine and Fisheries,  
House of Representatives.

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Notwithstanding these special rights of Texas, Florida and Puerto Rico, the United States claims only a three-nautical-mile territorial sea. The United States asserts no sovereignty seaward of that three-mile limit, even off the coasts of those jurisdictions. S. 858 would, however, assert U.S. title to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts, and title could only derive from sovereignty. This assertion cannot be supported in international law. To be sure, the areas in question fall within the U.S. exclusive economic zone (EEZ) and are part of the U.S. continental shelf. A country's sovereign rights in its EEZ and on its shelf do not, however, extend to ownership rights of objects that are not natural resources, which category does not comprise shipwrecks.

eh?  
you just  
said  
we  
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sovereignty  
beyond  
3 miles

There appears to be two ways to address this problem. One is to limit assertion of U.S. title to shipwrecks beneath "navigable waters," incorporating by reference the definition of that term in 33 U.S.C. 2316(7). Use of that definition will ensure that there is no assertion of ownership rights beyond the territorial sea.

An alternative approach would be for the bill to assert United States jurisdiction over, rather than title to, abandoned shipwrecks on submerged lands as defined in the bill. Under Article 303 of the 1982 United Nations Convention on the Law of the Sea (which the United States considers reflective of customary international law in matters relating to traditional uses of the oceans), a coastal State may exercise jurisdiction with respect to "objects of an archaeological and historical nature" found on the seabed within its contiguous zone. Since the contiguous zone of the United States extends out to 12 nautical miles, application of the bill to submerged lands nine nautical miles off the coast, even though seaward of the territorial sea limit, would be consistent with international law.

✓  
checked  
verified

A second matter involves vessels that, at the time of their sinking, were governmental vessels engaged in non-commercial service (generally, but not always, warships). The Department appreciates the careful manner in which S. 858 limits U.S. assertion of title to shipwrecks that are abandoned. As you know, the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act; mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment. This fact has two implications for

the application of S. 858. First, we understand that the same presumption against abandonment will be accorded vessels within the U.S. territorial sea that, at the time of their sinking, were on the non-commercial service of another State. Second, S. 858 does not apply to U.S. warships sunk within the territorial sea, unless they have been affirmatively abandoned by the U.S. Government. Were the jurisdiction approach mentioned in the preceding paragraph to be adopted, these implications would equally apply to such vessels located within the U.S. contiguous zone as well.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With best wishes,

Sincerely,

J. Edward Fox  
Assistant Secretary  
Legislative Affairs



**GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

Honorable James C. Miller III  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Miller:

Enclosed are six copies of a draft letter that the Department  
proposes to submit to the Congress regarding S. 858,

"The Abandoned Shipwreck Act of 1987."

65 Please advise us to whether there would be any objection to the  
submission of this letter to the Congress. If you have any  
questions about this matter, please contact Mark Haflich of the  
Office of the General Counsel at 377-4264.

Sincerely,

Robert H. Brumley  
Deputy General Counsel

Enclosures



**GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

Honorable Walter B. Jones  
Chairman, Committee on  
Merchant Marine and Fisheries  
House of Representatives  
Washington, D.C. 20513

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Commerce on S. 858, the "Abandoned Shipwreck Act of 1987".

Section 6 of S. 858 would assert title for the United States to all abandoned shipwrecks that are: (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on its submerged lands; or (3) on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places. Except for a shipwreck located in or on the public lands of the United States, the title of the United States asserted by section 6 would be transferred to the State in or on whose submerged lands the shipwreck is located. Section 7 would make the law of salvage and finds inapplicable to shipwrecks covered by section 6.

The Department of Commerce supports enactment of S. 858 but believes it should be amended in accordance with the enclosed draft amendment. We have carefully examined the relationship of S. 858 to title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) with respect to the protection of historic shipwrecks lying in territorial waters. Title III of MPRSA authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if he determines, in pertinent part, that the area is of "special national significance due to its resource and human-use values" and existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education. As most recently amended in 1984, section 303 of title III directs the Secretary to consider, among other factors, an area's historical, cultural, and archaeological significance in determining whether the area is of special national significance. Thus, the 1984 amendments provide for the designation and protection of abandoned historic shipwrecks as national marine sanctuaries if they are of "special national significance" and existing Federal and state authorities are

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inadequate to protect them. The National Marine Sanctuary Program has in place detailed policies and guidelines for protecting historical resources located in national marine sanctuaries.

We believe that S. 858 is deficient because although it would assert United States title for all abandoned historic shipwrecks lying in territorial waters, it would not retain United States title for those shipwrecks of "special national significance." As a result, it does not adequately protect the national interest in such shipwrecks.

Some abandoned historic shipwrecks are located in territorial waters presently under the management jurisdiction of national marine sanctuaries or national parks which have been established to protect natural and cultural resources of national significance. The national interest in such shipwrecks would be protected adequately if title to such shipwrecks, particularly those determined to be of special national significance, is asserted and retained by the United States. Section 6 of S. 858 as passed by the Senate, however, would transfer the title to such shipwrecks, including those of special national significance, to the states. Further, section 6 would not allow the United States Government to reassert title to any historic shipwreck of special national significance that is discovered in territorial waters in the future.

The national interest would be adequately protected by amending section 6 to retain title in the United States for those historic shipwrecks located in territorial waters that are of special national significance and to authorize the United States Government to reassert title to any abandoned shipwreck discovered in territorial waters in the future that is of sufficient national significance to merit inclusion in a future national marine sanctuary. With this amendment to section 6 (appropriate draft language enclosed), the United States government could continue to protect the national interest in historic shipwrecks of special national significance even if the shipwrecks are located in state waters.

If this amendment is not adopted, several questions regarding the Federal Government's regulatory authority over abandoned historic shipwrecks on state owned submerged lands under Federal jurisdiction and control remain. While section 7(b) specifies that S. 858 would not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies, it is not clear whether S. 858 would affect the regulatory authority of the Secretary of Commerce over abandoned historic shipwrecks in existing national marine sanctuaries. For example, section 7(b) could be interpreted as relinquishing the Secretary's regulatory authority over abandoned shipwrecks in existing national marine sanctuaries. Further, it is unclear whether regulatory authority

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over abandoned shipwrecks in future national marine sanctuaries could be asserted under S. 858.

We have been advised by the Office of Management and Budget that there is no objection to submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Robert H. Brumley  
Deputy General Counsel

DEPARTMENT OF COMMERCE  
PROPOSED AMENDMENT TO  
S. 858

- (a) Section 6(d) should be amended to read as follows:

"(d) EXCEPTION.-Any abandoned shipwreck in or on the public lands of the United States, any abandoned shipwreck in or on the submerged lands of a State and managed by law or agreement by a Federal agency, and any abandoned shipwreck in or on the submerged lands of a State and within a national marine sanctuary established under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. § 1431 et seq.) is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands."

- (b) Section 6 should be amended further by redesignating subsection as (e) as (f) and adding immediately after subsection (d) the following new subsection (e):

- (e) REASSERTION OF TITLE.-

"(1) The United States may reassert title to any abandoned shipwreck that was transferred to a State under subsection (c) of this section if, after the date of enactment of this Act, the abandoned shipwreck is found to be of sufficient national significance to merit inclusion within a national marine sanctuary under the provisions of title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. § 1431 et seq.).

"(2) Reassertion of United States title to an abandoned shipwreck under paragraph (1) of this subsection is effective on the date designation of the national marine sanctuary becomes effective, but the reassertion is subject to any right, title or interest to such shipwreck that was granted by the State before such date by permit, contract, license, or otherwise."